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FM SECSTATE WASHDC

TO AMEMBASSY AMMAN

AMEMBASSY BEIRUT

AMEMBASSY DAMASCUS

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PREFERENCES(GSP) UNDER SECS 502 (B) (4) AND (6) OF TITLE V
OF THE TRADE ACT OF 1974

REF: (A) STATE 282968; (B) STATE 282967

BEIRUT PASS BAGHDAD

1. AS REPORTED REF B, BEFORE GENERALIZED SYSTEM OF PRE-
FERENCES (GSP) FOR DEVELOPING COUNTRIES CAN BE IMPLEMENTED
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UNDER TRADE ACT OF 1974, INTERNATIONAL TRADE COMMISSION (ITC) MUST INVESTIGATE DOMESTIC ECONOMIC EFFECT OF PREFERENTIAL DUTY-FREE TARIFF TREATMENT ON IMPORTS OF THOSE ARTICLES PROPOSED FOR SUCH TREATMENT FROM COUNTRIES DESIGNATED IN AN EXECUTIVE ORDER AS BENEFICIARY DEVELOPING COUNTRIES. THIS MESSAGE DISCUSSES COUNTRY ELIGIBILITY UNDER THE NATIONALIZATION AND ARBITRATION PROVISIONS OF THE ACT.

2. SEC. 502 (B) (4) OF TITLE V OF THE ACT PROHIBITS THE PRESIDENT FROM DESIGNATING AS ELIGIBLE FOR GSP ANY COUNTRY WHICH HAS NATIONALIZED THE PROPERTY OF U.S. CITIZENS (INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIATIONS 50 PER CENT OR MORE BENEFICIALLY OWNED BY U.S. CITIZENS), OR TAKEN OTHER ACTIONS WITH SIMILAR EFFECT, UNLESS HE DETERMINES THAT FAIR COMPENSATION IS BEING PAID, THAT SUCH COUNTRY IS ENGAGED IN GOOD FAITH NEGOTIATIONS OR "OTHERWISE TAKING STEPS TO DISCHARGE ITS OBLIGATIONS UNDER INTERNATIONAL LAW,," OR THAT THE PARTIES HAVE SUBMITTED THE DISPUTE TO ARBITRATION. SEC. 502 (B) (6) APPLIES A SIMILAR PROHIBITION TO ANY COUNTRY WHICH FAILS TO AGREE IN GOOD FAITH TO RECOGNIZE AS BINDING OR TO ENFORCE AN ARBITRAL AWARD IN FAVOR OF U. S. CITIZENS (AGAIN INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIATIONS 50 PER CENT OR MORE BENEFICIALLY OWNED BY U. S. CITIZENS). FYI. UNLIKE THE HICKENLOOPER AMENDMENT (SEC 620 (E) OF THE FOREIGN ASSISTANCE ACT), SEC 502 (B) (4) (D) REQUIRES A PRESIDENTIAL DETERMINATION TO BE MADE AND FURNISHED TO CONGRESS REGARDING THE APPLICATION OF THAT SUBSECTION TO ALL UNRESOLVED DISPUTES. THIS NEW REQUIREMENT REINFORCES THE NEED FOR THE USG TO MONITOR AND TO ASSIST IN RESOLVING OUTSTANDING DISPUTES INVOLVING U.S. PROPERTY. END FYI.

3. IT WOULD BE HIGHLY DESIRABLE FOR THE ITC TO UNDERTAKE ITS PRODUCT REVIEW WITH RESPECT TO THE BROADEST POSSIBLE LIST OF POTENTIAL BENEFICIARIES, AND FOR THE COMMISSION TO BEGIN ITS WORK AS SOON AS POSSIBLE. WE WOULD PREFER TO CONDUCT A DETAILED INVESTIGATION OF CASES WHICH MIGHT AFFECT HOST COUNTRY ELIGIBILITY UNDER SECS. 502(B) (4) AND (6) WHILE THE ITC STUDY IS IN PROGRESS. FOLLOWING DIS-

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DISCUSSIONS WITH CONGRESSIONAL STAFFS, HOWEVER, IT IS UNCLEAR WHETHER INTERIM WAIVER OF INELIGIBILITY FOR ALL LDCS DURING ITC PRODUCT REVIEW (REF B PARA 4) WILL BE USED. SEVERAL ALTERNATIVE METHODS OF ACCOMPLISHING OUR OBJECTIVE ARE ALSO UNDER CONSIDERATION, BUT IT IS POSSIBLE THAT DETERMINATIONS OF COUNTRY ELIGIBILITY MAY HAVE TO BE MADE BEFORE THE ITC CAN BEGIN ITS PRODUCT ANALYSIS.

4. ACCORDINGLY, POSTS ARE REQUESTED TO INFORM THE DEPARTMENT ASAP OF THE STATUS OF OUTSTANDING CASES WHICH MIGHT AFFECT HOST COUNTRY ELIGIBILITY UNDER SECS. 502(B) (4) AND (6), IF STATUS OR IDENTITY OF CASES DIFFERENT FROM THAT INDICATED IN PARA 6-9 BELOW.

5. STARTING POINT FOR EVALUATION SHOULD BE TEXT OF US LEGISLATION ITSELF. UNTIL DEFINITIVE LEGAL ANALYSIS OF 502(B) (4) IS COMPLETED, POSTS SHOULD ASSUME IT APPLIES TO ALL PROPERTY (BOTH COMMERCIAL AND NON-COMMERCIAL) OF U. S. CITIZENS, WITHOUT REGARD TO VALUE. AS A "RULE OF REASON", WE ARE LIMITING EVALUATION TO CASES ARISING IN POST-WAR ERA, I.E., SINCE JANUARY 1, 1946, OR THE DATE OF INDEPENDENCE, WHICHEVER IS LATER. SINCE SOME ACTIONS (SUCH AS COERCED PARTICIPATION, SEVERE CURTAILMENT OF MANAGEMENT PREROGATIVES, OR FORCED CANCELLATION OR RENEGOTIATION OF CONTRACTS) MAY BE EXPROPRIATORY IN EFFECT WHILE STOPPING SHORT OF OUTRIGHT TAKEOVER, POSTS ARE REQUESTED TO INFORM DEPARTMENT OF SUCH CASES TO ENABLE US TO EXERCISE JUDGMENT IN DETERMINING WHETHER "NATIONALIZATION" HAS OCCURRED WITHIN THE MEANING OF 502(B) (4). JUDGMENTS MUST ALSO BE MADE TO DETERMINE, INTER ALIA, WHETHER THE CRITERIA OF 502(B) (4) (D) ARE BEING MET, AND WHETHER "GOOD FAITH" IS PRESENT UNDER 502(B) (6).

6. FOR AMMAN. NO KNOWN NATIONALIZATION CLAIMS WHICH WOULD COME UNDER SECTIONS 502(B) (4) OR (6) OF ACT.

7. FOR BEIRUT. ONLY KNOWN AMERICAN NATIONALIZATION CLAIM IS THAT OF AMERICAN SHAREHOLDERS IN IRAQ PETROLEUM COMPANY (IPC). THIS DOES NOT COME UNDER SECTION 502(B) (4) OR (6) OF ACT BECAUSE LESS THAN 50 PER CENT US OWNERSHIP.

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8. FOR DAMASCUS. ONLY KNOWN AMERICAN NATIONALIZATION CLAIMS ARE NATIONALIZATION OF EXXON AND MOBIL PETROLEUM DISTRIBUTION FACILITIES, AND IPC FACILITIES IN SYRIA. IPC CLAIM DOES NOT COME UNDER ACT BECAUSE LESS THAN 50 PER CENT US OWNERSHIP. SYRIA HAS AGREED TO NEGOTIATE WITH USG ON PRIVATE US CLAIMS AGAINST SYRIA, USG HAS ISSUED ANNOUNCEMENT ASKING CLAIMANTS TO REGISTER THEIR CLAIMS WITH STATE DEPARTMENT, AND ACTUAL NEGOTIATION AWAITS REGISTRATION OF CLAIMS BY CLAIMANTS. DEPARTMENT ANTICIPATES DETERMINATION THAT THIS CONSTITUTES APPROPRIATE STEPS TO DISCHARGE SYRIA'S INTERNATIONAL OBLIGATIONS; SUCH DETERMINATION WHEN ISSUED WILL MAKE SYRIA AT LEAST TEMPORARILY ELIGIBLE FOR GSP.

9. FOR BAGHDAD. ONLY AMERICAN NATIONALIZATION CLAIM KNOWN TO BE OUTSTANDING IS THAT OF AMERICAN SHARE-HOLDERS IN BASRAH PETROLEUM COMPANY. BPC NEGOTIATION APPEARS TO BE NEARING SETTLEMENT, AND IN ANY EVENT LESS THAN 50 PER CENT AMERICAN OWNERSHIP INVOLVED. HENCE SECTIONS 502(B)(4) AND (6) APPEAR NOT PRESENTLY APPLICABLE TO IRAQ. HOWEVER, IRAQ LIKELY BE EXCLUDED FROM GSP BECAUSE OF ANOTHER PROVISION OF LAW WHICH WOULD APPEAR TO MAKE OPEC MEMBER COUNTRIES INELIGIBLE. DEPARTMENT AND OTHER AGENCIES ARE STILL IN PROCESS DETERMINING PRECISE IMPLICATIONS OF THAT PROVISION, WHICH WILL BE SUBJECT OF SEPTTEL AT LATER DATE.

10. WOULD ALSO APPRECIATE MISSION COMMENTS REGARDING WHAT STEPS USG MIGHT APPROPRIATELY TAKE TO BRING THESE PROVISIONS TO THE ATTENTION OF HOST GOVERNMENT OFFICIALS, AND TO ENCOURAGE RESOLUTION OF OUTSTANDING DISPUTES. KISSINGER

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